IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17405 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAGVANDAS JAMIYATRAM RANA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 17405 of 2003

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MS MITA S PANCHAL AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 28/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 24/11/03 passed by respondent no.1 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that one F.I.R. was registered against him before Northern Division Police Station at C.R.No.1529/2003 on 06/10/03 for offences punishable u/s.66, 65 & 81 of the Bombay Prohibition Act, 1949. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities.

3. On the strength of the aforesaid one registered offence and two statements of unnamed witnesses, the detaining authority found that the petitioner is required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order, and accordingly, the impugned order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that on a mere fact that one offence was registered, it could not be said that the petitioner was a habitual offender. It has also been contended that the names of the witnesses were not disclosed to the petitioner, and therefore, the valuable right of the petitioner to make an effective representation against his detention has been denied. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. At the final hearing, the learned advocate for the petitioner states that the offences registered against the petitioner are also the offences registered against the detenu of S.C.A.No.17036/2003 which has been disposed of today. It is also his statement that teh present petitioner and the said detenu have been involved in the same set of offences and that they are co-accused and co-detenu in both the matters. He, therefore, states

that when S.C.A.No.17036/2003 has been disposed of, wherein the order of detention has been quashed and set aside, then on the principle of parity, the present petition may also be allowed and the order of detention may be quashed and set aside.

7. On hearing, it is found that in the present petition and in the aforementioned S.C.A., the offences registered against the detenus are common and the petitioners are co-accused in both the offences. It is true that the statements of witnesses are not common in both the matters. But the contents thereof are by and large similar. Moreover, there is a contention that the names of the witnesses have not been disclosed without properly exercising powers u/s.9(2) of the said Act. That, therefore, the case of the petitioner is on par with the case of the detenu in S.C.A.No.17036/2003. That when the said S.C.A. has been allowed and the order of detention has been quashed and set aside, then on the principle of parity, this petition is also required to be allowed.

8. For the foregoing reason and for the reasons stated in S.C.A.No.17036/2003, this petition is allowed. The impugned order of detention dated 24/11/03 passed by respondent no.1 against the petitioner, is ordered to be quashed and set aside. Detenu, Bhagvandas Jamiyatram Rana, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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